

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

G. A. a minor, by and through his
parents, MIGUEL & BARBARA AVILA,

Plaintiff,

v.

SPOKANE SCHOOL DISTRICT #81,

Defendant.

NO. CV-10-408-EFS
NO. CV-11-165-EFS

**ORDER GRANTING MOTIONS
TO CONSOLIDATE CASES AND
HOLDING IN ABEYANCE
MOTIONS TO AMMEND [sic]
COMPLAINTS**

G. A. a minor, by and through his
parents, MIGUEL & BARBARA AVILA,

Plaintiff,

v.

SPOKANE SCHOOL DISTRICT #81,

Defendant.

Before the Court, without oral argument, are Plaintiffs' Motions to Consolidate Cases and Ammend [sic] Complaints. CV-10-408-EFS, ECF No. [7](#); CV-11-165-EFS, ECF No. [4](#). Plaintiff G.A., a minor, by and through his parents, Miguel and Barbara Avila, brought two suits against Defendant Spokane School District #81, arising out of an alleged violation of the Individuals With Disabilities Education Act (IDEA). *Avila v. Spokane Sch. Dist. No. 81*, CV-10-408-EFS; *Avila v. Spokane Sch. Dist. No. 81*, CV-

1 11-165-EFS. Plaintiffs move to consolidate the two cases and amend the
2 complaints filed in each case. Defendant does not oppose the motions to
3 consolidate because the interests of judicial economy are best served
4 through consolidation but opposes the motions to amend.

5 **A. Consolidation**

6 Under Federal Rule of Civil Procedure 42(a), the Court may
7 consolidate cases that involve common questions of law or fact. Such
8 circumstances exist here. Plaintiffs have brought two similar causes of
9 action based upon the same set of common facts. In both cases,
10 Plaintiffs allege that Defendant failed to comply with the IDEA during
11 its evaluation of G.A., who suffers from Asperger's Syndrome. However,
12 in the second case, CV-11-165-EFS, Plaintiffs additionally ask the Court
13 to 1) review alleged school-district-attorney misconduct, and 2) admit
14 additional evidence. The facts, issues, and law applicable to both cases
15 are nearly identical; the latter case is simply an expansion of the
16 former.

17 This Court has broad discretion to consolidate under Rule 42(a) in
18 the interests of judicial economy and convenience. *See Pierce v. Cnty.*
19 *of Orange*, 526 F.3d 1190, 1203 (9th Cir. 2008) (citing *Investors Research*
20 *Co. v. U.S. Dist. Ct. for the Cent. Dist. of Cal.*, 877 F.2d 777, 777 (9th
21 Cir. 1989)). With those principles in mind, the Court consolidates these
22 cases for all future proceedings.

23 **B. Amendment**

24 Plaintiffs' May 6, 2011 motion to amend the complaints did not
25 comply with Local Rule (LR) 7.1(e) because Plaintiffs failed to file a
26 memorandum of points and authorities in support of that motion or a

1 proposed amended pleading. See 7.1(e) ("A failure to timely file a
2 memorandum of points and authorities in support of . . . any motion may
3 be considered by the Court as consent . . . to the entry of an Order
4 adverse to the party in default."). On June 3, 2011, and after Defendant
5 had responded to Plaintiffs' motion to amend the complaint, see CV-11-
6 165-EFS, ECF No. [6](#), Plaintiffs filed a Supplement to Plaintiffs' Motion
7 to Amend Complaint, ECF No. [12](#), which included a proposed amended
8 complaint. Because Defendant has not had an opportunity to respond to
9 Plaintiffs' proposed amended complaint, the Court holds in abeyance
10 Plaintiffs' motion to amend until the timeset for hearing on Defendant
11 Spokane School District's Motion to Dismiss, CV-11-165-EFS, ECF No. [7](#),
12 and Motion for Judgment on the Pleadings, CV-10-408-EFS, ECF No. [10](#).

13 Accordingly, **IT IS HEREBY ORDERED:**

14 1. Plaintiffs' Motions to Consolidate Cases and Ammend [sic]
15 Complaints, CV-10-408-EFS, ECF No. [7](#), and CV-11-165-EFS, ECF No. [4](#), are
16 **GRANTED** (consolidation) and **HELD IN ABEYANCE** (amendment) **IN PART**.

17 2. All future pleadings shall be filed under Case Number **CV-10-408-**
18 **EFS**, unless the Court later directs otherwise. All pending deadlines and
19 hearing dates shall be stricken as to Case Number **CV-11-165-EFS**, which
20 shall be administratively closed.

21 3. **NO LATER THAN June 20, 2011**, Defendant may supplement its
22 response to Plaintiffs' motion to amend the complaints, CV-10-408-EFS,
23 ECF No. [7](#), and CV-11-165-EFS, ECF No. [4](#), if necessary, based upon the
24 Supplement to Plaintiff's Motion to Amend Complaint, ECF No. [12](#). If such
25 supplemental response is filed, Plaintiffs may file a reply **NO LATER THAN**
26 **June 27, 2011**. The Court **RESETS** Plaintiffs' Motions to Consolidate Cases

1 and Ammend [sic] Complaints, CV-10-408-EFS, ECF No. 7, and CV-11-165-EFS,
2 ECF No. 4, for July 11, 2011, without oral argument.

3 4. A telephonic scheduling conference is SET for August 11, 2011,
4 at 10:30 a.m. The parties shall use the information in the Notice
5 Setting Court's Scheduling Conference, CV-10-408-EFS, ECF No. 6, to
6 access the call and comply with all meet-and-confer and joint report
7 requirements set forth therein.

8 5. Per Federal Rule of Civil Procedure 26(d)(1), discovery will
9 follow the issuance of a scheduling order in this consolidated case.

10 IT IS SO ORDERED. The District Court Executive is directed to enter
11 this Order provide copies to counsel.

12 DATED this _____ 6th _____ day of June 2011.

13
14 S/ Edward F. Shea
15 EDWARD F. SHEA
16 United States District Judge
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